

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

KAREN MARTIE, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

Case No: 2:20-cv-43-FtM-38NPM

M&M BEDDING, LLC,

Defendant.

ORDER

This matter is before the Court on the Motion for Clerk's Default, filed on March 23, 2020. (Doc. 9). Plaintiff Karen Martie requests the Court to direct the Clerk to enter a default against Defendant M & M Bedding, LLC. (*Id.* at 1). Defendant failed to respond to the motion and time to respond has lapsed.

Pursuant to Rule 55(a), "[w]hen a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend and that failure is shown by affidavit or otherwise, the clerk must enter the party's default." Fed. R. Civ. P. 55(a). Prior to directing the Clerk of Court to enter a default, however, the Court must first determine whether Plaintiffs properly effected service of process. *Chambers v. Halsted Fin. Servs., LLC*, No. 2:13-CV-809-FTM-38, 2014 WL 3721209, at *1 (M.D. Fla. July 28, 2014). Plaintiff has the burden of establishing effective service of process. *See Zamperla, Inc. v. S.B.F. S.R.L.*, No. 6:13-CV-1811-ORL-37, 2014 WL 1400641, at *1 (M.D. Fla. Apr. 10, 2014). Rule 4(l) provides, "unless service is waived, proof of service must be made to the court. "

Service on an unincorporated entity can be made by any manner prescribed in Rule 4(e)(1) or “by delivering a copy of the summons and of the complaint to an officer, a managing or general agent, or any other agent authorized by appointment or by law to receive service of process. . . .” Fed. R. Civ. P. 4(h)(1). Likewise, under state law, a limited liability company may be served through its registered agent. Fla. Stat. § 48.062(1). And § 48.062(1) also provides that a person attempting service may serve process on any employee of the registered agent on the first attempt at service. *Id.*

In the motion, Plaintiff asserts she effectively served process on Defendant by serving its registered agent. (Doc. 9 at 1). The Affidavit of Service (Doc. 8) confirms the process server served Mark Hyland, as registered agent of Defendant. (Doc. 8 at 1). It appears service of process was effective. And M&M Bedding, LLC has not plead or otherwise defended this action.

Accordingly, it is hereby **ORDERED**:

The Motion for Clerk’s Default (Doc. 9) is **GRANTED** and the Clerk of Court is directed to enter a Clerk’s default against M&M Bedding, LLC.

DONE and **ORDERED** in Fort Myers, Florida on April 10, 2020.



NICHOLAS P. MIZELL
UNITED STATES MAGISTRATE JUDGE

Copies furnished to:

Counsel of Record
Unrepresented Parties